MUDA ABDUL RAHMAN

v.

MUDA MOHAMED & ANOR.

HIGH COURT MALAYA, KUALA TERENGGANU
EUSOFF CHIN J
[CIVIL SUIT NO. 54 OF 1979]
30 AUGUST 1983

CONTRACT: *Breach of contract - Claim for damages or refund of payment made under agreement.*

The plaintiff claimed that he had entered into an agreement with the 1st defendant as agent of Syarikat Kemajuan Kemaman, whereby in consideration of the payment of RM145,000 the defendants agreed to permit the plaintiff to log and remove timber from a piece of land in Kemaman. The plaintiff alleged that the defendants had been in breach of the above agreement and he claimed loss of profit and the RM145,000 paid under the agreement and in the alternative, the return of RM145,000, which he claimed he had borrowed from his towkay.

Held:

[1] There was no evidence that there was such an agreement as claimed by the plaintiff.

[2] In any case, any logging permit issued to Syarikat Kemajuan Kemaman was not transferable without the approval of the State Government, and therefore, if there was any contract at all between the plaintiff and the defendants it was illegal and ineffective.

[3] Without proof of breach of contract the claim for estimated loss of profit must be dismissed.

[4] The claim for the return of RM145,000 too must be dismissed as it was not the plaintiff's money. The money had been paid by the towkay directly to UMNO, Bahagian Kemaman.

Case referred to:

Abdullah bin Mamat & Anor v. Pengarah Hutan Negeri Trengganu [1982] 1 MLJ 342; [1982] CLJ (Rep) 379

For the plaintiff - G. S. Nijar & En. Mohideen Abdul Kader; M/s. Mohideen Abdul Kader
For the defendants - Abd. Rahman; M/s. Abdullah, Abdul Rahman & Co.

JUDGMENT

Eusoff Chin J:

The plaintiff claimed that he had on 27 July 1975 entered into an agreement with the first defendant as agent of Syarikat Kemajuan Kemaman, whereby in consideration of the payment of RM145,000 the defendants agreed to permit and authorise the plaintiff to log and remove timber from a piece of land having an area of 1,300 acres and situated in Mukim of Tebak, Kemaman. In their statement of defence, the defendants admitted that the State Government of Trengganu had granted to them the right to log and remove timber from the land as delineated on Pelan Topo Bilangan 62. The plaintiff alleged that he had paid RM145,000 to the defendants, but the defendant in breach of the agreement refused to allow the plaintiff to log and remove timber from the land. He claimed that he suffered loss and damages:-

(a) loss of profit RM250,000 (later in open Court amended to RM703,000) and

(b) RM145,000 paid under the agreement.

Alternatively, he claimed the return of RM145,000 paid under the agreement.

The plaintiff gave evidence in Court and called three witnesses. The defence did not give evidence in Court and relied on their pleadings.

The plaintiff said that in June 1975 he came to know from one Salleh bin Kasim, UMNO Secretary, Kemaman that there was a forest concession available. The plaintiff saw a petition writer, who prepared to the plaintiff's application for the timber area. The application dated 16 June 1975 was made on the advice of Salleh, and is as follows:-

Muda bin Abdul Rahman
Kampong Telok Mengkuang,
Kemaman.
16 Jun 1975.

Kemajilis
Tuan Pengerusi UMNO Bahagian
Kemaman.

Tuan,

Sebutharga Membalak di Kawasan
Tebak Sebagaimana Topo Sheet Bil. 62

Adalah saya, Muda bin Abdul Rahman, pemegang lesen membalak bilangan 37/69, (Mendaftar. 26(ii) Sambongan Daf. dengan hurmatnya menawarkan sebutharga untuk membalak di dalam kawasan yang ditetapkan sebagaimana topo sheet bil. 62 yang dikembarkan bersama ini.

2. Tawaran sebutharga saya ialah sebanyak RM145,000 (Ringgit: satu ratus empat puloh lima ribu, lima ratus sahaja).

3. Saya adalah seorang pembalak yang berlesen sejak tahun 1969 dan ada mempunyai alat-alat yang diperlukan seperti Bulldozer, Santaiwong dan Chainsaw.

4. Sekiranya tawaran ini berjaya, saya mengaku akan menjelaskan bayaran sebutharga ini di dalam tempoh masa yang ditetapkan oleh Jawatankusa tender ini.

Sekian. Harap mendapat timbangan dan kelulusan tuan jua. Terima kaseh. Adanya.

Saya dengan hurmatnya
yang benar,
t.t.
(Muda bin Adbul Rahman)
K.P.No.0478299

A letter approving the tender, was sent to plaintiff by first defendant, and is produced below:-

Pertubohan Kebangsaan Melayu
Bersatu
UMNO Bahagian Kemaman

(United Malays National
Organisation)
Pejabat Setia Usaha
Bahagian Kemaman
K-271, Jalan Masjid,
Kemaman

27 Julai 1975.

Surat Kami
(9) dlm. K/KEMN/
(Sdn) Bhd. 127.

Kepada,
Encik Muda bin Abd. Rahman,
Kampong Telok Kalong,
Kemaman.

Tuan,

Per: Tawaran Kawasan Balak Pelan Topo Bin:62

Adalah dimaklomkan yaitu tawaran tuan bagi kawasan Balak yang tersebut di atas dengan sebutharga RM145,500 (Rgt: Seratus Empat Puluh Lima Ribu Lima Ratus) sahaja itu. Maka dengan ini Tuan diberitahu bahawa LEMBAGA PENGARAH telah meluluskan dengan tawaran tersebut dengan syarat-syarat seperti di bawah ini:-

1. Wang pendahuluan hendaklah dibayar sebanyak 10% daripada tawaran itu dan hendaklah dijelaskan dalam masa timpuh 2 minggu dari tarikh surat ini.
2. Baki hendaklah dibayar jelas dalam masa tempuh satu bulan selepas tarikh membayar penduhulan 10% itu.
3. Wang pendahuluan 10% yang telah dibayar itu akan dirampas kiranya tuan enggan menandatangani perjanjian dalam timpuh yang ditetapkan.
4. Segala belanja yang berkaitan dengan kerja membalak bayaran premium, pertaruhan, Chukai Royalti, dan lain-lain bayaran yang kena dibayar termasuk Tol jalan, jika ada, hendaklah ditanggong sepenohnya oleh tuan sebagai pehak pembalak.

Sekian bagi makloman dan tindakan tuan.

tt
(Haji Muda bin Mohamad)
b/p/ Pengarah
Kemajuan Kemaman
(Sdn) Bhd.

The plaintiff said he went to see his towkay to borrow money to pay the 10% deposit. The towkay and the plaintiff went to see first defendant, and handed a cheque (P2) to the first defendant for RM14,550. The plaintiff said that he made 3 other payments with his towkay's cheques (P3, P4, P5) and that the towkay himself had paid another RM24,000 to settle the amount of RM145,000. The plaintiff also said in evidence that Salleh bin Kasim had told him that the logging permit could be transferred to him (plaintiff). If not for that promise, the plaintiff said, he would not have tendered for the area. The plaintiff said that he was not called to sign any agreement, and he was never given the logging permit to carry out logging operations. The plaintiff said that he had asked Salleh bin Kasim to refund the RM145,000 and Salleh had told him that he (plaintiff) could not get back the money because it was the towkay's money. The area was subsequently given to the towkay. The plaintiff alleged that the towkay and the defendants had cheated him.

The plaintiff alleged that in this estimate, there were 18 tons of logs per acre and that his profit per ton would be RM30 and he claimed this amount - (which is 18 tons x 1,300 acres x RM30 - RM702,000).

Under cross-examination the plaintiff had said that he, with the towkay and Salleh had gone to see the logging area, and that he and the towkay had made calculations, and came to the

figure of RM145,000 as fair tender price for the area.

The plaintiff also admitted that he never mentioned about the logging permit to the defendants. He thought he would be given the logging permit. He admitted that the first defendant never told him that he could be given a logging permit for the area. It was Salleh bin Kasim who told the plaintiff that the logging permit would be given to the plaintiff. When asked, plaintiff said that he was not calling Salleh to give evidence. He did not also call the towkay, nor mention in evidence who the towkay was.

The plaintiff denied that he went to see the towkay to give him the logging area, but admitted borrowing RM1,000 from the towkay before submitting his application for the area, and another RM4,500 after the application was approved.

The plaintiff said that the towkay had paid the RM145,000 because he (plaintiff) wanted to sell all the logs to the towkay. That was the first time he wanted to sell logs to the towkay, even though he had earlier done logging operations in an area of 4000 acres under licence No. 37/69.

The plaintiff received a letter from Pengurus Syarikat Kemajuan Kemaman dated 14 January 1976 cancelling the tender given to him.

Finally the plaintiff admitted that he in fact never spent RM145,000. It was the towkay's money. He never lost RM145,000. He had nothing in writing to prove his loss or profits.

PW2 and PW3 were Hongkong & Shanghai Banking Corporation officials who testified that the cheques P2, P3, P4 and P5 were made out in the name of UMNO Bahagian Kemaman, and that the cheques were issued by Lee Huat Timber Co.

PW4, the Menteri Besar Trengganu was the Ketua Bahagian UMNO Kemaman in 1975. He did not know anything about the logging concession as he only concerned himself with UMNO party matters. He said that UMNO had received donations. He said that party members (without his knowledge) had put cheques into UMNO account and later withdrew them.

In this case, there was no agreement signed between the plaintiff and the defendants or with the Syarikat Kemajuan Kemaman for which the plaintiff alleged that the defendants are acting as agents. There was the application letter of the plaintiff, and the approval letter of the 1st defendant who signed for the Manager of Syarikat Kemajuan Kemaman. There was the letter cancelling the approval given to the plaintiff, (letters at page 1, 2 & 4 of AB). The first defendant himself never gave any promise to the plaintiff that the logging permit would or could be given or transferred to the plaintiff. The plaintiff never paid the RM145,000. He admitted it was not his money but the towkay's money and it was the towkay who gave the cheques and RM24,000 to make up RM145,000. All the cheques produced were issued by Lee Huat Timber Co., and they were not made out in favour of the defendants, or the Syarikat Kemajuan Kemaman, but to Umno Bahagian Kemaman. There were no receipts given to the plaintiff by the defendants to acknowledge that the defendants or the Syarikat Kemajuan had received the tender money from the plaintiff. (The 4 cheques plus the RM24,000 added up would in fact give a total sum of RM145,050).

The plaintiff's application letter to Kemajuan Kemaman is dated 16 June 1975, and the approval was given by Kemajuan Kemaman on 27 July 1975. (Both letters at page 1 and page 2 of AB). The Permit No. 41/75(page 5 of AB) issued by the State Director of Forest to Kemajuan Kemaman was effective for period 1 September 1975 to 31 December 1979. Therefore the plaintiff's tender and the Kemajuan Kemaman's approval were made long before logging

permission by the State Director of Forest was issued to Kemajuan Kemaman. The permit was also not transferable (para 1 of the permit at page 5 of AB). In any event, the plaintiff agreed that the defendants never made any promise to the plaintiff that the permit would or could be transferred to him. It was Salleh bin Kasim who made that promise to the plaintiff, and Salleh was not a party to the contract. Therefore, if there was any contract at all between the plaintiff and the defendants, the contract was illegal and ineffective, as the defendants could not guarantee that they could transfer to him a logging permit to work the timber area. The power to issue or approve a transfer of a logging permit is with the State Government.

The plaintiff had done logging operations in an area of 4,000 acres between 1969 to 1974. For that area of land, he had a made a nett profit of RM40,000. In this suit before me, he is alleging a loss of profit of RM703,000 for an area of 1,300 acres. He said in evidence that for each acre of land he would get 18 tons of logs, and would make a RM30 profit per ton, so that for 1,300 acres it would come to RM703,000. Under cross examination he said that he estimated that in each acre of land he could get 12 trees that could be cut for logs, and that each tree could be cut into 3 logs, which would give ten tons of logs. That would give 120 tons of logs per acre so that for 1,300 acres there would be 156,000 tons, and at RM30 per ton profit, he would have made RM4,680,000 profit. When he originally filed the suit in Kuantan High Court (Exh D8), and again in this suit against the defendants, (before the amendments of the statement of claim) he claimed RM250,000 as loss of profits. These figures are only the plaintiff's estimates of his loss of profits as he clearly stated "I only estimate the loss. I have nothing in writing to prove this loss."

In *Abdullah bin Mamat & Anor v. Pengarah Hutan Negeri Trengganu* [1982] CLJ (Rep) 379, the learned Judge had dismissed a claim for estimated loss of profit when there was no loss incurred by the plaintiff without proof of breach of contract. Since there is no existence of any contract between the plaintiff and the defendants, there is no breach of contract, and the claim of the plaintiff on his estimated loss of profits amounting to RM703,000 is hereby dismissed. I do not know the reason why he is claiming RM145,000 only when the tender price for the area was for RM145,500. In any event, the plaintiff had admitted in evidence that the RM145,000 as tender money was not his money since it was the towkay who paid the money to the defendants. I therefore, dismissed his claim for the return of the RM145,000. I also ordered the plaintiff to pay the costs of this suit to the defendants.

Also found at [1984] 1 CLJ 111